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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/586,095  | 07/14/2006  | Horst Tillmann       | 5255-98PUS          | 1792             |
| 27799 7590 11/20/2008<br>COHEN, PONTANI, LIEBERMAN & PAVANE LLP<br>551 FIFTH AVENUE<br>SUITE 1210<br>NEW YORK, NY 10176 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| O'BRIEN, JEFFREY D  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3677  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/586,095

**Applicant(s)**

TILLMANN, HORST

**Examiner**

Jeffrey O'Brien

**Art Unit**

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE9203873 herein referred to as '873 in view of Applicant's Admitted Prior Art, herein referred to as 'APA.

4. For Claims 7-12, '873 discloses a door closer comprising: a housing for receiving a door closing mechanism, the housing comprising a longitudinal upper edge and two attaching flanges (Fig. 1: 20), each of the attaching flanges having three attachment holes for receiving attachment components, the three attachment holes comprising lower, central and upper attachment holes; wherein the housing has two end surfaces, and the attaching flanges are disposed at the end surfaces, respectively; wherein the attachment holes of each of the attaching flanges are equally spaced from one another;

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wherein the attachment holes of each of the attaching flanges are aligned with each other; wherein the housing has a longitudinal central plane, and the central attachment hole of each of the attaching flanges is disposed in the longitudinal central plane; wherein the remaining two attachment holes of each of the attaching flanges are offset from the longitudinal central plane (as is clearly seen in Figures 1 and 2).

5. '873 is silent as to the spacing of the attachment holes. 'APA discloses in paragraph [0004] that attachment holes are commonly secured about 28mm below the upper edge of the door and that the common spacing between attachment holes is about 19mm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to space the lower, central and upper attachment holes of '873 at about 19mm from one another and to place the central attachment holes at the common 28mm distance below the upper edge of the door with respect to the longitudinal upper edge when installing the door closer in order to allow the hole spacing to align with the reinforced area of the door in which the door closer is screwed on.

6. For Claim 13, '873 discloses the door closer of claim 7, wherein the door closer is capable of being mounted to a door using only two of the three attachment holes in each of the attaching flanges for universal installation of the door closer.

7. For Claim 14, '873 discloses the door closer of claim 7, wherein the door closer is capable of being mounted to a door using the lower and central attachment holes and not the upper attachment holes in the attaching flanges.

8. For Claim 15, '873 discloses the door closer of claim 7, wherein the door closer is capable of being mounted to a door using the upper and central attachment holes and not the lower attachment holes in the attaching flanges.

9. Regarding Claims 13-15, the Examiner notes that the phrase "mountable..." in the claim is intended use language. Applicant's claims are replete with intended use language, and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). As such, the door closer of '873 is capable of being attached with only two of the three attachment holes, and can be attached using any combination of the attachment holes including a lower and central combination and an upper and central combination.

#### ***Response to Arguments***

10. Regarding claim 7, Applicant argues that '573 does not disclose "attachment holes for receiving attachment components". It is clear from Figs. 1 and 2 that the flange 20 has three holes which are capable of receiving screws or similar fastening devices to attach the door closer to a door.

11. Applicant's remaining arguments with respect to claims 7-15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey O'Brien whose telephone number is (571)270-3655. The examiner can normally be reached on Monday through Friday 8:00am-5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor Batson/  
Supervisory Patent Examiner, Art Unit 3677

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